EXHIBIT H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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PAVLE ZIVKOVIC, *et al.*,

Plaintiffs,

v. 17 CV 553 (GHW)

LAURA CHRISTY LLC, doing business as Valbella, *et al.*,

Defendants. Hearing
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New York, N.Y.
October 25, 2023
10:15 a.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

JOSEPH & KIRSCHENBAUM LLP
Attorneys for Plaintiffs
BY: D. MAIMON KIRSCHENBAUM
LUCAS BUZZARD

BAKER & HOSTETLER LLP
Attorneys for Interested Party Rosey Kalayjian
BY: MAXIMILLIAN S. SHIFRIN
MICHAEL S. GORDON

(Case called)

MR. KIRSCHENBAUM: Good morning, your Honor, Maimon Kirschenbaum and Lucas Buzzard for plaintiff.

THE COURT: Good. Thank you very much. Good morning.

MR. SHIFRIN: Good morning, Max Shifrin and Michael Gordon for Ms. Kalayjian.

THE COURT: Thank you very much. Good morning.

First, thank you all for being here. We are here for a hearing with respect to the plaintiffs' application for an order of attachment as to the assets of Ms. Kalayjian.

Counsel, thank you for the written submissions in connection with this application. I have reviewed them.

Before we proceed, let me just ask counsel, does either side wish to or expect to present any evidence to the Court in connection with this application beyond the materials that have been submitted in writing in connection with your briefing of the matter?

Counsel, first, for plaintiff.

MR. KIRSCHENBAUM: Not for plaintiff, your Honor.

THE COURT: Thank you.

Counsel for Ms. Kalayjian.

MR. SHIFRIN: No, your Honor.

THE COURT: Thank you very much.

I have reviewed the materials that the parties have submitted. I have some questions for you, counsel. If there

is anything that either side would like to add to your written submissions to the Court, however, I'm happy to hear from you. As I say, I have reviewed the written submissions to date. Still, if there is anything that you'd like to highlight before I ask you a handful of questions, I'm happy to hear from you.

Let me start, if I can, first, with counsel for the plaintiff.

Is there anything that you would like to add?

MR. KIRSCHENBAUM: Your Honor, a couple of quick points without making the full presentation, because it sounds like your Honor has questions lined up.

Obviously, there are three statutes here at play. For all of them I think one of the important questions is -- one of the important recognitions is we are not talking about, was there consideration, like is there consideration for a contract.

The question is, for each of them, was there reasonably equivalent value, and for each of the transactions there is not a shred of evidence that either there was value that was taken into account or that the -- not that there was an antecedent debt that David owed Rosey any money. There is no record of that. There is no evidence of that. There is certainly no evidence that any of the many transfers in question were to satisfy any kind of antecedent debt. There is plenty of case law that hold defendant -- that would hold the

transferee to that kind of standard.

I think it's also an important recognition that this is not a punishment to the transferee for receiving these things. It's simply the protection of the creditors who had a right to this money and have now had it all dissipated.

Another important point is, the issue of joint tenancy. I am not sure where the Kalayjian party is, what they are trying to argue. I think that the law is clear that joint tenancy means that while they both have access to the funds, the creditors can levy an entirely joint account. The relevant analysis here is before the money went into the joint account, it was collectible by a plaintiff. After the money went into the joint account, it was collectible by plaintiff. After the money left the joint account, it was not collectible -- it is not collectible by plaintiff unless this levy is issued.

Another important theme, and I could go through this in more detail, but I am sure your Honor is familiar with this, is the total contradictions between Ms. Kalayjian's testimony at her deposition, at times not even knowing what these transfers were about, and at other times having a completely full picture of what the transactions were based on.

Oak Grove Road. The shares in Oak Grove Road is a great example. At times she said she owned the whole 90 percent. At other times she said she was promised 66. In her deposition she said the 66 recitation in the amendment was a

mistake. It's all over the place.

Then, to make things even worse and possibly even most significantly, is David Ghatanfard's story totally doesn't line up with her story at all.

I think those are our main points. I'm happy to address that specifically, if your Honor wants, or to answer whatever questions your Honor has ready for me.

THE COURT: Thank you.

Let me turn to counsel for Ms. Kalayjian.

Counsel, is there anything that you'd like to add to your written submissions or focus on, or is there anything that you would like to say in response to counsel for plaintiffs' remarks?

MR. SHIFRIN: Thank you, your Honor.

I am certainly prepared to address the Court's questions and to talk about the issues and the transfers in detail. This is, after all, a transfer-by-transfer analysis.

But what I'd like to do at the moment, if I may, just to take a minute and step back and look at this motion holistically. I do not mean to besmirch opposing counsel when I say this, but I do think that there is a certain callousness to this motion. There is a certain scorched-earth nature to it. There is an indifference to the last 20 years of Rosey Kalayjian's life, which she has submitted to the Court in painstaking, highly personal detail.

Plaintiffs are going after virtually every asset Rosey has, liquid and illiquid alike, without regard to any of the context that establishes her rights to those assets without any regard to her life.

What are we talking about here, your Honor? We are talking about Rosey's rights to two of the homes that she has poured her life into over nearly two decades, homes that she has paid for, homes that were hers, homes that she has improved dramatically over many years. Plaintiffs want to take that from her. We are talking about Rosey's livelihood, her interests in a restaurant that she envisioned, spearheaded, invested in, developed, and for which she serves as the director of operations. Plaintiffs want to take that from her as well.

What else are we talking about? We are talking about the proceeds of a sale of a business that she herself ran and operated without any help from Mr. Ghatanfard. Plaintiffs want to take that income from her as well.

Your Honor, I get it. Plaintiffs are judgment creditors. Judgment creditors have rights. But Rosey isn't a judgment debtor. Rosey Kalayjian isn't David Ghatanfard. She has her own identity, she has her own history, she has earned her own keep, and she has her own rights. And implicit in plaintiffs' motion is that Rosey isn't her own person, that she doesn't have her own rights, that she is just David, that

everything that she has is David's. That's at odds with reality, that's at odds with the evidence, it's at odds with the law. Plaintiffs' inability in three briefs, your Honor, to meaningfully address the substance of Rosey's argument, to meaningfully rebut the evidence Rosey offered spanning two decades of her professional and personal life proves the point.

Now, as I said at the outset, your Honor, at the end of the day the disposition of plaintiffs' motion requires a transfer-by-transfer analysis. They need to show a probability of success on the merits to support an attachment, not generally by creating this vague specter of impropriety with respect to everything under the sun. But on a transfer-by-transfer basis they need to show that they are probably going to be successful. It is 50/50 or less with respect to any of these transfers or any component of them. The motion has to be denied and the restraints on her assets lifted.

I submit to the Court that they have fallen well short of carrying their burden on any of these transfers. They have painted a misleading picture devoid of the relevant context, and they fail to adequately rebut the arguments Rosey has made and the evidence that she has provided in her opposition. An order of attachment, your Honor, demands more.

I'm happy to go into the relevant details of the transfers here, I am happy to address any questions the Court

has, or I'm happy to turn it back over to plaintiffs' counsel and we can take it from there.

THE COURT: If you would like to talk about each of the transfers, I'm happy to hear from you, and then I'll hear from counsel for plaintiff.

MR. SHIFRIN: Certainly, your Honor.

There are certain things that I think are worth responding to that plaintiffs' counsel said at the outset.

Let's talk about these depositions that appear to be the elephant in the room. The depositions that they are pointing to were taken in the companion case, the 2022 action, which is a successor liability action. This case was recently reassigned from this Court to Judge Subramanian.

The depositions at issue there pertain to whether Valbella At The Park was a successor entity to Valbella Midtown. It did not pertain to any of these transfers, and the depositions in those cases took place well before the temporary restraining order application was filed, the motion for an attachment was filed.

Counsel to Ms. Kalayjian had no opportunity to prepare, to discuss these issues. She had no idea what was coming her way at the time. It was a completely different issue in those cases. So I don't think that the deposition testimony from an unprepared witness, who is blindsided by these transfers, in a case where frankly they weren't relevant,

your Honor -- if we were counsel at the time, I think we would have objected to the questioning all together, because it simply had nothing to do with whether Valbella At The Park was a successor entity to Valbella Midtown. No objections were made.

Putting that aside, your Honor, there are other things that I can respond to plaintiffs' counsel about, but let's get into some of the details here in terms of what we think is the way to approach the analysis.

I think the starting point of the analysis has to be the following reality. At an absolute minimum here, we are talking about joint assets to which Rosey has a 50 percent entitlement, at an absolute minimum. The transfers in this case not only passed through a joint account, which, as we say in our papers, your Honor, absolutely has legal significance, the assets themselves that were deposited into the joint account were the type of joint assets that you would expect to be deposited into the joint account.

What do I mean by that? For example, we are talking about the proceeds from the sale of the Canterbury House in Harrison, New York that Rosey and David shared for 12 years. Why wouldn't be that deposited into the joint account. Why wouldn't that be a joint asset, given her payment of the mortgage on that house from the joint account, which by the way, your Honor, was opened in 2011, years before this lawsuit

was brought.

Her contribution to the deposit when they bought the house. The house was half hers, for all intents and purposes, and there was nothing unusual about depositing the proceeds of a joint house that she poured her life into over the course of 12 years, including personal tragic detail that she recounted in her declaration. There is no reason that such an asset, that the sale of such an asset wouldn't be a joint asset, wouldn't be deposited into a joint account, and wouldn't be 50 percent Rosey's. That's the starting point.

The same goes for the refinancing of the Southampton house and the transfer of title on that house. That house is Rosey's. David testified that it was a joint house. He testified that the Harrison house was a joint house as well. They had an understanding. They had a handshake agreement. This is how people live their lives.

Title is not dispositive here. It just isn't, especially in the context of a fraudulent transfer action. She contributed blood, sweat, and tears to that house in the form of gut renovations. She paid the mortgage of that house from the joint account, just as she did for the Canterbury House, and the same thing goes for the other cash deposits, including income from the various restaurants deposited into the joint account. These were the joint assets of life partners, and the statutory rights that the New York banking law gives Rosey to

these assets cannot just be stripped.

THE COURT: Can I pause you on the deposits from the businesses.

MR. SHIFRIN: Sure.

THE COURT: What was the nature of the transfers from the businesses? Were they equity distributions?

MR. SHIFRIN: They were income -- our understanding was, it was income, presumably equity distributions.

THE COURT: Thank you.

Please proceed.

MR. SHIFRIN: These deposits of income were joint assets that belonged to both of them as a starting point, and the New York banking law gives Rosey a statutory right to these assets that cannot be stripped away. We understand that judgment creditors have rights, but Rosey has rights too. Judgment creditors' rights don't supersede other rights that people have to property. They have rights to David's property, but not to Rosey's property. That is the absolutely key distinction here with respect to every dollar that passed through the joint account.

Again, your Honor, I just want to just flag one issue here. It seems like the right point to do it. Certainly there are situations where you can imagine a joint account being opened after a judgment has been entered and the joint account -- the joint account holders are insiders, but they

have no history of using a joint account and it was clearly done for fraudulent purposes, and the money that went into the joint account was clearly not a joint asset. It was just some other money that clearly belonged to the judgment debtor. In those situations it's an entirely different story and, under New York law, there is a fraud exception to these types of transfers using a joint account in that way, and the case law that we cite explains that.

But that's not what we are dealing with here, your Honor. We are dealing with ordinary deposits from a life and business partnership into a joint account. Rosey is entitled to that.

The Connecticut case that plaintiffs' counsel cited in their reply brief provides, frankly, a great example of a type of scenario where disregarding the joint account, significance of the joint account makes sense. In that case, the joint account was opened after the claims were brought. In that case, the spouse admitted that she transferred the money to her account in order to avoid judgment creditors getting that money. She admitted that. There was zero evidence of consideration. There was all sorts of discovery in proprieties and failures that eventually resulted in a default judgment against her.

In short, the situation is completely different than the situation here. The joint account has significance. We

can't just disregard it. And more to the point, the money, the types of assets that are deposited into the joint account here are clearly valid and not fraudulent on their face because they have a history of being -- we have a history of similar deposits preceding the lawsuit in this case.

Most significantly, as we spend some considerable time in our briefing emphasizing, is the sale of the restaurant to Valbella in January of 2016. That mirrored, mirrored the transfers that plaintiffs are seeking to deem fraudulent here and turn over. There was no lawsuit. There was no debt. How is a deposit and a transfer prelawsuit that mirrors subsequent transfers, how does that -- let me rephrase, your Honor. Is that fraudulent too? How do we distinguish between these? How did they coexist?

At the end of the day, if they did it before the lawsuit and it was consistent with their pattern and practice, that means the subsequent transfers after the lawsuit, which we can defend and we do defend through a 14-page affidavit and multiple, multiple exhibits, 43 exhibits, they are the same. It had nothing to do with the lawsuit. It had to do with their pattern of practice of reimbursing each other, of sharing their assets, pooling their assets as life and business partners.

Those are the big-picture items I wanted to raise, but I'm happy to delve deeper into the individual transfers. I think with respect to the OGR transfer specifically, which I

think is kind of separate and distinct from the others, in that this wasn't an antecedent debt issue; this was just a straight-up consideration issue that was provided and reflected in detail in the amendment to the operating agreement that plaintiffs themselves attached and then proceeded to ignore and, in three briefs, have yet to rebut in any way, shape, or form. Instead they are relying on a boilerplate articulation of 10 percent -- $10 worth of consideration that contracts often include, and we have cited cases, your Honor, frankly, that are completely dispositive, holding that this sort of reliance on a boilerplate consideration provision of $10 is inadequate and is meritless.

I just want to reemphasize the quote from the case that we cited, which is *Motorola v. Abeckaser*. It's Eastern District of New York case, 2010. Plaintiff's sole asserted basis for questioning that fair consideration was paid is the fact that the deed states that the property was transferred, quote, in consideration of $10 and other valuable consideration. Absent some further ground for doubting the veracity of the records indicating that the property was sold for $400,000 and the statements in defendant's answer confirming the same, the plaintiff has not met its burden of demonstrating consideration was lacking.

Your Honor, that parallels the facts here perfectly. That is what we are dealing with here. We have express

evidence of specific consideration, specific money transfers from Ms. Kalayjian, and we have a contract that acknowledges the receipt and the transfer of those records in exchange for the ownership interest.

So all this side show about Ms. Kalayjian -- of plaintiffs emphasizing Ms. Kalayjian's mistake, which they, for some reason, spent three pages addressing, while not addressing the actual consideration argument that we were making, it is a side show.

The reason we included it, your Honor, was not to distract, but to simply convey to the Court that this was the intention all along, and the formalization of that longstanding intention, i.e., to make Rosey the principal stakeholder in OGR and make Rosey the principal member or individual operating Valbella At The Park, the subsequent amendments to the agreements were done to effectuate and honor that longstanding commitment. That was our purpose of just emphasizing the mistake, but we then proceeded to address the lack-of-consideration argument that plaintiff was making for the transfer, and we did that by offering evidence. We offered bank statements supporting the transfers in the operating agreement, and they have not responded to it.

THE COURT: Let's walk through that. Looking at page 21 of your opposition brief, where you describe this transfer, you describe a consideration in three parts. What I'd like to

do is to walk through each of those, if we can.

The first thing that you mentioned is the $600,000 payment from the Kalayjian Patriot account.

Can I just ask for you, counsel for Ms. Kalayjian, to just summarize what you understand the evidence to be regarding the source of the funds in the Patriot account, and then also to whom that payment was made.

MR. SHIFRIN: Your Honor, I don't know that we have a position or if there is evidence that dispositively resolves the principal source or the original source of that money, and there is no argument from plaintiff to that effect either. All we know is that Rosey Kalayjian had a bank account, her own individual bank account, and she transferred $600,000 from that account.

And the second part of your question was who received it?

THE COURT: Yes.

MR. SHIFRIN: That money went into the OGR operating account. It was used to pay for the capital contributions of OGR.

THE COURT: Thank you.

Understood.

Let's talk about the second piece of consideration that's described here, which is $1.3 million from the joint account. What's your response to each of those same questions

with respect to this payment?

MR. SHIFRIN: So you're talking about, your Honor, the balance of the payments for the OGR interest?

THE COURT: Yes.

MR. SHIFRIN: That came from the joint account, which, again, half of which belongs to Rosey, but was clearly done with David Ghatanfard's consent to provide that money in exchange for her interest, which joint account holders are 100 percent entitled to do. Again, that's in the cases that we cite, *In Re Leff* specifically. So the source of that money was the couple's joint account and the money went, just as I said before, your Honor, to OGR for purposes of funding the capital contributions to OGR and VATP.

THE COURT: Thank you.

Did the OGR shares have any value prior to these contributions?

MR. SHIFRIN: Yes. Why wouldn't they, your Honor. Yes, they absolutely did. I don't mean to ask the Court a question, but of course they did. They were interests in a soon-to-be very profitable restaurant that is operating right now on the corner of Sixth Avenue and Bryant Park.

THE COURT: Thank you.

You appreciate the issue. If those payments were made to pay into a capital contribution for operating or other expenses of the business and the shares had value previously as

equity in this successful business, then these payments did not reflect arguably the preexisting value of those shares. Instead, they were used to fund the operating accounts, as you just described.

So let me put it differently. If you have a successful business and it's worth $100,000, you put in $50,000 of capital contributions, you would expect that your equity would then be one-third of the value of the company. That's because $100,000 is the value before the equity contributions, 50 is the amount of the equity contributions. 50 over 150 is one-third.

Here, you have said that the value of the company was X, something substantially greater than zero, and she got 90 percent of the equity interest in that company as a result of the 1.9 million plus category 3.

The question is, as counsel for plaintiff articulated, why is this reasonably equivalent value?

MR. SHIFRIN: Your Honor, I admit that was challenging for me to follow from beginning --

THE COURT: Let me do it again.

MR. GORDON: Your Honor, is it OK if I respond to that? Because I think I can clarify it.

THE COURT: Thank you. If you'd like.

MR. GORDON: The 1.9 million did come from the joint account. Those payments all came from various prior

restaurants: Valbella Midtown, Valbella Meatpacking, One If By Land, restaurants into which Rosey poured herself. She got little to no money as compensation.

THE COURT: Thank you.

Let me just pause you. I appreciate that. You're focused on the source of the contribution.

MR. GORDON: Then the monies were used to make OGR as the 50 percent comanaging member of VATP, Valbella At The Park. The 1.9 million was made as a capital contribution before the business even began, as the, I guess, starting capital. Rosey put in 1--

THE COURT: Thank you. I'm sorry. I appreciate it.

The prior response was that the equity interest had value prior to the capital contribution. I understand that your proffer now is that that's basically the starter capital. So the value of the equity is the 1.9, plus category 3.

MR. GORDON: That is correct.

THE COURT: I appreciate it. Please proceed.

MR. SHIFRIN: Your Honor, are there any other questions with respect to the OGR transfer interests specifically?

THE COURT: Only to the extent that you can help me trace the source of the $1.3 million that was held in the joint account. Can you comment on that.

MR. SHIFRIN: Where did that money come from? How was

it deposited into the joint account to begin with?

THE COURT: Yes.

MR. SHIFRIN: Your Honor, frankly, I don't think that I am prepared to say where it came from other than that it was income from both Mr. Ghatanfard -- it was the result of their commingling of assets over many years and it's hard to unwind that, unpack that. Obviously that included deposits of income from David's other restaurants. That included perhaps other deposits of income that Ms. Kalayjian had. It was a commingled joint account where money was deposited from different sources, presumably, so it's hard to say where that specific money came from, but presumably a fair chunk of it came from Mr. Ghatanfard's capital ownership interest in other restaurants.

THE COURT: Thank you.

Anything else, counsel for Ms. Kalayjian?

MR. SHIFRIN: There are certain other transfers here, your Honor. I don't want do belabor and repeat what we say in our papers, but just to emphasize a bit more what Mr. Gordon just said, these transfers to Ms. Kalayjian -- putting aside the OGR transfer, which we just discussed, the money that was transferred to Ms. Kalayjian was to discharge antecedent debts that she was owed for years of contributions to all the restaurants that Mr. Ghatanfard owned, sometimes as a phantom owner, but nevertheless owned, and Ms. Kalayjian consistently contributed her efforts well beyond whatever nominal

compensation that she was paid.

This is an important distinction, your Honor, again, from the Connecticut case where spouses who have no argument and no involvement in any of the money that the debtor transfers to them through a joint account. This is considerably different. This is compensation for prior services in the form of a discharge of an antecedent debt.

This is exactly how they did it, your Honor, again, just to reemphasize, with respect to the TuttaBella sale in January of 2016. The transfers of income, the sale of One If By Land specifically, your Honor, which was another restaurant. This is something I should probably emphasize more. The One If By Land specifically, your Honor, was exactly analogous to TuttaBella.

So TuttaBella, in 2010, Ms. Kalayjian came in, took over that restaurant, made it profitable with zero help from Mr. Ghatanfard. In 2016, January 2016, Mr. Ghatanfard sold the business and said, here you go, you earn this. Based on your efforts, you are entitled to keep this. The exact same thing happened with One If By Land. Ms. Kalayjian ran that restaurant without Mr. Ghatanfard's contributions at all. He was the phantom owner. Then when he sold that restaurant, he transferred, just like he did with TuttaBella, the proceeds of that sale to Ms. Kalayjian in discharge of the antecedent debt that Mr. Ghatanfard owed Ms. Kalayjian.

Your Honor, again, I can go into the details. Our briefs go into it. But context is king here. No matter what statute we are talking about, whether it's 273(a), 273(a)(1), 273(a)(2), or 274, under the New York Debtor Creditor Law, context matters. These are fraudulent transfer statutes or constructive fraudulent transfer statutes, and the purpose is to ascertain whether there are other explanations for these transfers.

I think we have provided the Court an extensive record that demonstrates there are other reasons for these transfers, reasons that preexist the lawsuit, reasons, of course, that existed after the lawsuit. But people have to live their lives, whether they are sued or not, and they don't have to change what they do and how they do it and how they do business just because they have been sued. As we say in our papers, your Honor, a lawsuit does not turn the ordinary into the suspect in and of itself. We have to consider the context here.

Plaintiffs' submissions have not done that. That's the key thing. They have a burden on a motion for an order of attachment to consider the context. They have just ignored it all together. I don't think I'm overstating it. They really have.

All they are focusing on is the transfers in a very, very narrow vacuum. They are ignoring all the evidence that

Ms. Kalayjian submitted. They are saying it's not to be believed on the basis of deposition testimony in another case with separate irrelevant issues. I don't think that's fair to Rosey. Rosey has rights and those rights should be vindicated and protected.

Thank you.

THE COURT: Thank you.

MR. GORDON: Your Honor, with respect to the context, also, as your Honor knows, Mr. Ghatanfard is critically ill. He was aware of his cancer diagnosis at least a year or two ago, but it metastasized most recently.

But at the time that he first became aware of his cancer diagnosis, he began, in effect, estate planning. He even testified to that during his deposition. I am not going to be around forever and I'd like to provide for her. That is an additional context. He's 20 years older than she is, and he wanted to make -- ensure that she had monies for when he was no longer with her.

THE COURT: Thank you.

Counsel for plaintiff, any response?

MR. KIRSCHENBAUM: Your Honor, I am going to start with a couple of responses to the points that defendants make and then, if it's OK with your Honor, just make a couple of points with respect to each transfer.

First of all, just in order of some of the points that

defendants made, with respect to Ms. Kalayjian having been deposed in another matter, first of all, she testified under oath. I think what happens, especially the starkness and contradictions between her testimony at her deposition and what she submitted to the Court in this motion indicates that, yes, she testified what she could remember. We are talking about a transfer of 4 plus million dollars in assets. She remembered very little about them, and then now has a totally full-blown fantastical story about each of the transfers. That's point one. Her deposition testimony should absolutely be considered to show that she is not testifying truthfully now.

Secondly, with respect to joint tenancy law, I am not sure if defendants simply don't understand what joint tenancy law is about or if they are just misapplying it. There is no question that while the money is in a joint bank account, both parties are in possession.

But the relevant point for our purposes is that the money is entirely leviable, and there is a ton of law supporting that which we have cited in our brief. The point of the case in Connecticut, which has almost an identical -- which is dealing with a statute that is an almost identical definition of what a transfer means for the purpose of being a voidable transfer is that when something goes from being leviable to being unleviable, that is the fraudulent transfer and that should be voidable.

THE COURT: Can I just pause you on that. I apologize. I saw that in your brief.

In the circuit's decision, I think as fairly represented in your brief, they focus on, as you say in your brief, the transfer out of the joint account.

What is your position regarding whether or not the gift into the joint account is itself a transfer?

MR. KIRSCHENBAUM: Two things.

First of all, I don't know that the answer to that question is necessarily dispositive of the current motion. I think at a turnover proceeding once the money -- the transfer is voided, at a transfer -- at a turnover proceeding Ms. Kalayjian could then somehow try and make an argument that the joint tenancy is not really joint tenancy. That's why I'm confused by the argument she is making. If it were in fact a joint tenancy, then again the law is clear, and we have cited a ton of law on this, that all of the money is collectible. There are state court decisions from virtually every department.

She can rebut the presumption, but then what I believe that her counsel is misapplying here is that then she would actually be having to make the opposite argument and be saying that this arrangement was an arrangement for convenience and really all of the money was my, Rosey Kalayjian's money, not Mr. Ghatanfard's money. Absent being able to prove that, I

think that if the money were in the joint account, we would be able to not only levy all of it, but we would also be able to turn it over in a turnover proceeding.

THE COURT: Thank you.

MR. KIRSCHENBAUM: Does that answer --

THE COURT: Yes. You can proceed.

MR. KIRSCHENBAUM: And I should point out that if we would not be able to get that money in the joint account, then the very entry of the money -- of Mr. Ghatanfard's money into the joint account would be a voidable transaction, because a judgment debtor cannot simply purify half of their assets by putting it -- putting them into your joint account, no matter how they lived their life with a spouse. These laws were intended to protect creditors, not to give -- the point of the banking law Section 675 was not to give any spouse the opportunity to sort of protect half their money from collection.

Moving to the consideration of Oak Grove Road, it is not the case that we are resting our argument completely on the recitation of a $10 consideration. The standard here is reasonably equivalent value. Defendants have provided not a shred of evidence as to what the source of the funds were. In fact, just a simple inference from following the transactions that took place, it's a very easy inference that the money that funded -- the money that funded the so-called consideration for

the transfer of Oak Grove Road is exactly the money that we were saying either belonged to Mr. Ghatanfard in the first place or was inappropriately transferred to Ms. Kalayjian.

THE COURT: Thank you. Let me just ask you to pause on that, counsel.

You have a view regarding the question that I posed to counsel for Ms. Kalayjian, which is, what's your view regarding tracing the source of the 1.3 million and $600,000 payments? What's the evidence that you point to to support the position that the likely source of those funds were the assets for Mr. Ghatanfard that you seek to attach?

MR. KIRSCHENBAUM: First of all, the timing of the transfers that went from the joint account out -- out of the joint account to Ms. Kalayjian and then within two years they all come back, that's A. B is, the ones that came from the joint account, I don't know how important is the source. The sourcing is, on its face, money that belonged to the two of them, absent any showing that Ms. Kalayjian either won the lottery or inherited a ton of money or just had her own money to pay for it. I think really the burden falls on her at that point.

Another point is that, as your Honor touched upon, there is absolutely no recitation of value that the company has been valued at this amount and, therefore, I am paying this amount in exchange for that, and that is their burden to prove

here. They have got to prove there was reasonably equivalent value.

More importantly, there was no -- one would think that if somebody was buying back a company for 1.9 million or buying into a company for 1.9 million, there would be some record of, I am paying this money with an expectation that this will be transferred to me, but, instead, the entire record is created backward looking after the jury verdict or right around the time of the jury verdict and the judgment, when OGR is transferred. Then there is this entire backwards-looking recitation of the events to make it look as though it was in exchange for transfers of money.

Since we are starting with OGR, I'll point out a couple of other points with respect to OGR that I think are relevant. Ms. Kalayjian's testimony was all over the place. She testified at her deposition that 90 percent -- that the entire OGR was hers from the beginning. Then she testified that there was -- when confronted with a recitation in the agreement, that there was a prior 66 percent transfer. She said -- the questioner asks: Do you recall Mr. Ghatanfard ever agreeing to transfer you 60 percent of Oak Grove Road? And she responded: No. It is supposed to be 90 because that's what I am, 90. He was 10. Yet in her own declaration, in paragraph 37, she testifies that in fact the 66 percent transfer is exactly what happened. She made an initial transfer for 66

percent and then got an additional percent as compensation for her contemplated director of operations role. Her own story contradicts itself right on its face, which calls into question any representations she is now making about what the consideration was.

I think we have touched on most of the points other than one other crucial point, is that Mr. Ghatanfard himself doesn't remember that there was ever an operating agreement or and that he ever transferred any money from Oak Grove Road, and Mr. Ghatanfard's position on this is possibly the most important. He is the transferor. He is the one whose assets we are assessing were fraudulently transferred.

In reality, there is an operating agreement. The operating agreement was executed in May of 2021. In the operating agreement Mr. Ghatanfard is appointed at that time manager of the company. Mr. Ghatanfard signed the lease for the place. The story that defendants --

THE COURT: Can I just ask about that. When did OGR begin operations relative to the timing for the alleged payments by Ms. Kalayjian?

MR. KIRSCHENBAUM: OGR began operation in or about May of 2021 -- February of 2021. The transfers are stated -- you got February 2021. There is a $500,000 transfer by the two of them. April 2021, $600,000 by Rosey herself. July from the joint account. September from the joint account. February

2022 from the joint account. So it's over the course of that year.

THE COURT: Thank you.

You take issue with Ms. Kalayjian's counsel's proffer that the contributions happened as startup capital before there was an operating business with any independent value?

MR. KIRSCHENBAUM: I'm sorry.

THE COURT: You take issue with counsel for Ms. Kalayjian's proffer that the contributions were made as startup counsel before the business had any independent value?

MR. KIRSCHENBAUM: It's a little bit of a term of art. I don't think it was evaluated by a third party. I think they probably pumped money into the company on an as-needed basis, but the shares certainly had value. If Ms. Kalayjian is testifying that she was exchanging money for value, there is absolutely no record of that or indication of that.

THE COURT: They had a leasehold interest before some of these payments were made?

MR. KIRSCHENBAUM: They did. They had a leasehold, I believe, in --

THE COURT: Did the company have other physical assets before any of these payments were made?

MR. KIRSCHENBAUM: They had all the goodwill of moving the operation from midtown to downtown. They had an ongoing agreement with the other partners in Valbella At The Park to

move forward and to open the restaurant and certain commitments that are all recited in the operating agreement dated before then. Sure, they had an entire business plan underway at that point.

THE COURT: Thank you. Please proceed.

MR. KIRSCHENBAUM: Moving to the proceeds of Canterbury -- I do want to make one more point. With respect to TuttaBella -- and this is by way of introduction to the rest of these transfers. Yes. He may have lived his life that way in 2016 and moved $600,000 to her. But as defendants say -- as the Kalayjian party says, the important point here is context. Over here -- over there they could do whatever they want. Over here there are creditors, and there is an entire slew of transactions and a period of two years that we see clearly have stripped Mr. Ghatanfard of his assets completely. He has testified he has got nothing. The purpose of the series of transactions is incredibly clear.

The Canterbury transfer, September 2020, 1.23 million, all went to Rosey's account. They talk about a longtime understanding about how they would apportion the assets. That is the epitome of unfalsifiable testimony. There is not a shred -- there is not a shred of evidence. Many people own homes with their lives, with their spouses, with their life mate, with their partners. They set something up in order to do that.

Here, there is nothing. There is no statement that I am giving you $1.23 million because I owe it to you or why I am giving it to you. There is totally not a shred of evidence that what the value of her work was or that the transfer was made in consideration for that value. All there is is that this lucky end result is all the money I transferred to you equals about all the money that I think we should value -- we should value your work at.

One more crucial point is that Mr. Ghatanfard himself, after repeated questioning, could not even remember what he did with the money. He thought he may have sent it to family in Iran. It was only after several rounds of questioning that Mr. Nussbaum asked him, suggested, maybe you gave the money to Rosey, that he acknowledged that that might be a possibility. Those are -- that is hardly the indicia of someone who owed his life partner all of his assets and was now diagnosed with cancer and is trying to set up his estate so that she could have all his money. He could not even acknowledge that he gave her the money, to be clear, let alone why he gave her the money.

With respect to the Southampton property, in January, 1.4 goes to Rosey. In May, the house is deeded to them jointly. They say that it was the result again of a joint understanding between the parties, of work that she did, of mortgage payments that she made, which it should be noted that

she didn't start making mortgage payments until after the house was deeded to her in May of 2022, not a shred of evidence that that was the purpose of the money.

At her deposition it is not clear that she even knew that the refinance happened. She testified in her declaration to the Court that because of favorable mortgage rates, her and Mr. Ghatanfard decided to refinance. At her deposition it was not clear to her that it had even been refinanced, and she testified that when she saw a new bank, when she saw a new bank's mail coming in the mail, she thought that maybe the reason that was happening was because a new bank had purchased the mortgage from her own bank. That's hardly the way someone would testify if, again, her life mate was suffering from cancer and transferred to her $1.4 million because he was trying to settle on his estate.

Next question. She lived in the house all this time. She did improvements. She is saying that this is how they lived their life as a couple. They share the house. Why would she have a $1.4 million debt or what they want to call a $700,000 debt for fixing the very house in which she is lives. The reality is, Mr. Ghatanfard makes a lot of money, she lived with him, and she chose to do this work on the house.

There was absolutely no resolution that she was owed any money or that giving her this property, this very significant amount of property, was in payment for that money.

Same thing goes for Valbella Midtown.

One thing to point out for Valbella Midtown and One If By Land is, there is not a shred of income reported. She is now telling us that this was payment to her for all her work. Does she report any income that she got from the sale of Valbella? Does she report any income that she got from the sale of One If By Land? Absolutely not. She does not. Why? Because it was not -- because it was not income. It was an illegal transfer.

Besides for all of these points, which mostly revolve around reasonably equivalent value, it's crucial to take into account, with respect to at least 273(a)(1), the other factors that are indicia of fraud.

THE COURT: Thank you. I think I have heard enough for now.

Let me turn to counsel for Ms. Kalayjian just with a couple of brief questions, if I can.

First off, you have heard counsel for plaintiff make the assertion that the entirety of a joint account may be seized by a judgment creditor; in other words, that by transferring money to a joint account, a debtor does not protect half of the value of the assets. They point to the circuit's decision that they have identified in their brief. There are New York State appellate division cases that support that conclusion.

What's your view? Is it your view that the law supports the argument that once funds are placed in a joint bank account by a judgment debtor, the entirety of the funds in the joint account may not be seized, but rather that only 50 percent may be seized. Perhaps I made that too complicated. If a judgment debtor has a joint account, is it not the case that a hundred percent of the funds in the joint account can presumptively be seized by the judgment debtors' creditors?

MR. SHIFRIN: We don't dispute that, your Honor. That is the law. The cases we cite said as much, but it's not just the issue.

The issue is, can they go after that money once the joint account holder exercises their right to alienate their own one-half interest, which they have, and we have cited cases and language that specifically say this. Can they go after that money once it's out of the joint account. The answer to that, I think, is no, absent, of course, some kind of fraud. But that's not what we are dealing with here. We are dealing with her interests in a house that they shared, in income that she earned, etc.

THE COURT: Thank you. Let me pause you.

In your briefing -- I'm looking to page 24 of your opposition. You argue that plaintiffs cannot rely on the UVTA, which implicates David's intent to discharge their heightened burden of proving Rosey's intent to attach her assets.

Can you expand on that. What's your view? I'll give you a hypothetical that's a little simpler. A judgment creditor concededly fraudulently provides to his daughter money. She has no idea that the father is doing that as a matter of fraud. Are you saying that the statute does not permit a judge debtor to seize the assets from the daughter because the daughter does not have fraudulent intent?

MR. SHIFRIN: Your Honor, I think the point that we were trying to make at that part of the brief is simply that the operative inquiry is the judgment debtor's intent. That's the simple point that we are making, and it seemed in plaintiffs' briefing that they were focused a lot on Rosey's intent.

THE COURT: Thank you. Good. Understood.

One other brief question, counsel.

Again, looking to your opposition at page 23, one of the factors is, of course, whether or not this is based on a judgment of a court of the United States. In your brief it appears that you are arguing that this precondition is not satisfied because the person whose assets are sought to be attached is not themselves -- is not herself the judge debtor.

Can you expand on that argument if I'm interpreting it properly.

MR. SHIFRIN: I think you said it perfectly, your Honor. I don't think they have cited any cases to suggest

otherwise. I am not sure there are cases that suggest otherwise. We are not aware of any. But under that specific provision, under that specific justification for an order of attachment, it seems a stretch to extend it here in this way, in the way that you just stated, your Honor.

THE COURT: Thank you.

Is there a textual basis for that construction of the statute? In other words, where it says, based on a judgment of a court of the United States, that it should be read to mean, based on a judgment against the person whose assets are sought to be seized of a court of the United States.

Where does that restriction reside in either the text or the case law?

MR. SHIFRIN: It was based on our evaluation of the case law and us not being able to find a single instance where it was applied in this matter against a nonjudgment debtor.

I understand that the language says what it says and you can give it a broad gloss or a narrow gloss, but the plaintiffs, whose burden it is to obtain an attachment, an order of attachment, have not pointed to any cases where this has been applied to a judgment debtor's spouse.

THE COURT: Can I just pause on that. Your proffer to the Court is that there are no cases in which a third-party's assets have been attached in support of a judgment against a judgment debtor?

MR. SHIFRIN: No. I want to be careful not to overstate it. We have not found -- plaintiffs did not cite a case and our review of the cases did not find a case, did not result in a case where this provision was specifically asserted as a basis to go after a nonjudgment debtor's assets. It's a narrow point, your Honor, and I'm very careful not to overstate for fear of not knowing what might be in the U.S. reports, but that's my understanding of the case law. Again, plaintiffs have pointed to no case stating the contrary.

THE COURT: Thank you.

MR. GORDON: Your Honor, may I just close a loop. I wanted to close a loop on the OGR question that you had asked, which is that OGR was formed in February of 2021, and thereafter OGR and Alpine Pike Investments entered into an LLC agreement for Valbella At The Park. Each of Oak Grove Road LLC and Alpine Pike Investments LLC are 50 percent managing members of Valbella At The Park. Each of OGR, through Rosey, and Alpine Pike Investments through a gentleman named Robert Daleo, invested 1.9 million into Valbella At The Park as starting capital. At the time of that investment, there was no value. It was startup capital.

Mr. Kirschenbaum made reference to goodwill. Our position is this restaurant was an entirely new entity and a completely different concept from Valbella Midtown, and this was just starting capital to get the restaurant off the ground.

THE COURT: Thank you. Good. That's helpful.

I just have one brief question I think before I'd like to take a short recess. That pertains to the underlying issue here. The request for attachment of assets is, I'll call it, a request for the Court to protect the prospect of a decision supporting the plaintiffs' claim that these are fraudulently transferred assets. That's an issue that we are not ultimately deciding here. Instead, I'm determining whether or not the provisional relief that the plaintiffs have sought is appropriate here.

What I'd like to do is just to hear from each of you about your view regarding the process for plaintiffs' turnover proceedings eventually. As you know, the CPLR provides a judgment creditor to bring a special proceeding against someone with money or other personal property the judgment debtor has interest in. A special proceeding is not a proceeding that's recognized with those words under the Federal Rules of Civil Procedure. As you know, Rule 2 only provides for a single form of action.

What I'd like to do is just to hear what the parties expect the process to be for the Court to ultimately resolve the question of the turnover motion. Here, plaintiffs have suggested that it's essentially a summary judgment motion in that I can grant relief when there are no material questions of fact, but, as I understand it, there are some disputed issues

of fact presented by Ms. Kalayjian through her counsel.

Let me hear from you about how you anticipate that these issues will ultimately be resolved. I'm particularly interested in your views as to whether or not this is an issue that will be tried to the Court or if it is something that requires a jury as the finder of fact. These are considerations that I want to think about as we are thinking about the propriety of the provisional relief requested here.

Let me turn first to counsel for plaintiffs.

Counsel, what's your thinking on this procedural question?

MR. BUZZARD: I think the Court summarized exactly the procedural posture. I think that to initiate this turnover proceeding, we would file a motion like a summary judgment motion. If there were disputed issues of fact that are material -- and, again, I am not sure that any of the factual issues that have been identified here are necessarily material -- then there would have to be a trial. As to whether this trial would be jury or bench, I would have to -- I would have to honestly look into that a little bit more. I believe it would be -- I think I would have to look into that a little bit more. My sense tells me that it may be a bench trial issue.

THE COURT: Thank you. That's fine.

I appreciate the request for additional time to think

about the issue. It is an important one for us to resolve going forward, but we don't need to resolve it here.

Counsel for Ms. Kalayjian, do you have a view on those questions?

MR. SHIFRIN: I think I ultimately agree with Mr. Buzzard that we probably all want to think about it some more, but I think it's important to point out that there is no turnover application that has been brought here, so this is somewhat, I think, at the moment academic.

The other point I want to make, your Honor, is that this motion for an order of attachment is preliminary relief, as this Court is well aware, as plaintiffs, I'm sure, won't dispute. But once there is another application, there needs to be additional briefing, perhaps a trial, additional evidence, additional record developing. So we are operating from a preliminary record here. And I think that's just worth emphasizing, that there may be more facts that come to light that are relevant to the ultimate disposition of plaintiffs yet-to-be-filed turnover application.

THE COURT: Good. Thank you.

Counsel for plaintiffs, anything else on that point?

MR. BUZZARD: Just very quickly, your Honor.

One of the forms of relief we are seeking in connection with the attachment is discovery in aid of attachment. That necessarily will encompass some discovery in

aid of execution. We need to know if the Court grants attachment. And if we are to move to turn over funds held by Ms. Kalayjian, we need to know, first, where those funds are, which we have not been able to do. That is why we have not brought a formal turnover as of yet. We do not know where the funds are, and we need those funds in order to have them turned over.

I think, based on what Mr. Shifrin just said, both parties agree that there should be discovery if attachment is granted.

MR. GORDON: Your Honor, with respect to the discovery, plaintiffs' counsel, the same counsel who represents Mr. Zivkovic in the 2022 action before Judge Subramanian that previously was before your Honor, between that action and this action they have served countless discovery demands to which we have responded. We have produced, I think at this juncture, in excess of 45,000 pages of discovery. We have answered information subpoenas on behalf of Ms. Kalayjian, on behalf of OGR, on behalf of VATP. They have asked every conceivable question not only twice, sometimes three times, so I cannot imagine what additional discovery plaintiffs need that they have not already sought and obtained.

THE COURT: Thank you.

MR. KIRSCHENBAUM: Your Honor, can I respond to that briefly?

THE COURT: Yes.

MR. KIRSCHENBAUM: The discovery we need is, where is the money? Where is Ms. Kalayjian's money? Defendants two minutes ago, in addition to that, just said that the record may more fully develop before a turnover proceeding. Certainly if there is something we don't know that defendants are going to use to defend themselves, then obviously that's something we need to know if we did take their depositions. We are ready to put them on the stand. But, A, if Ms. Kalayjian is going to come up with yet a new argument, I think we need to know what that is and, B, if we are going to execute on her assets, we need to know what her assets are.

THE COURT: Counsel, thank you much for your arguments. I am going to step down. I expect that I am going to step down for a relatively extended period of time to contemplate your arguments. It's about 11:20 now. My proposal would be that we, by default, reconvene at 11:45. My deputy will let you know if we need additional time. I will step down now. Please, unless you hear more from Ms. Joseph, be prepared to start again at that time. Thank you all very much.

(Recess)

THE COURT: Counsel, thank you very much for your indulgence. We are back on the record after an extended recess, about 50 minutes long.

Let me just say that I appreciate the parties'

arguments and your respective briefing. I think that I'm in a position now to resolve the application. With your indulgence, I am going to do that now.

I am going to begin with an introduction.

I. INTRODUCTION.

I scheduled this conference to discuss Plaintiffs' June 29, 2023 motion for an order of attachment against the assets and property transferred from Defendant David Ghatanfard to non-party Rosey Kalayjian. Dkt. No. 420-34.

The defendants in this action are Laura Christy LLC (doing business as "Valbella"), Laura Christy Midtown LLC (or "Valbella Midtown"), David Ghatanfard, and Genco Luca. See Dkt. No. 424 (partial judgment). The plaintiffs in this case are Mr. Pavle Zivkovic and a class of plaintiffs who are similarly situated. *See id.* For the purposes of today's conference, when I refer to "Plaintiff" in the singular, I am referring to Mr. Zivkovic. When I refer to "Defendants," I am referring to the defendants I just listed, except Mr. Luca, who is not relevant to Plaintiffs' motion.

I have reviewed the extensive briefing and accompanying factual evidence to assess Plaintiffs' application. Because Mr. Ghatanfard transferred virtually all of his assets to Ms. Kalayjian's personal account with the threat of a multi-million dollar judgment hanging over his head, I am going to grant Plaintiffs' motion and issue an order

of attachment on Ms. Kalayjian's assets.

II. BACKGROUND.

I assume all the litigants here today are familiar with the underlying basic facts and procedural history of this six-year case, so I will not recite them here in full. Because Ms. Kalayjian is not a party to the litigation and Plaintiffs' motion involves a fairly tangled web of events, however, I will highlight the facts, including the procedural history, that are the most relevant to my decision.

These facts are not disputed and are drawn from the supporting declarations to the briefing and what I've heard today in court, unless otherwise noted.

First, I will go over a few events from this litigation. This commenced on January 25, 2017. Dkt. No. 1. Plaintiffs, as food-service employees at Defendants' restaurants, asserted class claims of various wage-and-hour violations and individual claims of discrimination on the basis of national origin. Fact discovery, with some limitations, closed in February 2018, and expert discovery closed in April 2018. Dkt. No. 62.

The COVID-19 pandemic interfered with the scheduling of a trial in this matter, but, on November 10, 2021, I scheduled trial to begin at the end of March. Dkt. No. 248. A jury trial began on March 31, 2022, resulting in an April 11, 2022 jury verdict against Defendants. Dkt. No. 283. I entered

judgment against Defendants Valbella, Valbella Midtown, and Mr. Ghatanfard on June 22, 2022. Dkt. No. 324.

After further motion practice and procedural history that I don't think are particularly relevant here, I subsequently entered partial judgment against the same Defendants, jointly and severally, in the amount of $5,092,017.85. Dkt. No. 424. Plaintiffs have yet to recover any of that amount. Accordingly, Plaintiffs have been pursuing extensive enforcement proceedings, including by filing the motion for attachment of Ms. Kalayjian's assets. Dkt. No. 420-34. Plaintiffs' theory is, in a nutshell, that Mr. Ghatanfard has transferred substantially all of his assets to Ms. Kalayjian to avoid paying the judgment.

This motion was accompanied by an *ex parte* motion for a temporary restraining order, or a "TRO," which I granted on July 5, 2023. Dkt. Nos. 420, 438. In doing so, I found in part that Plaintiffs had demonstrated a likelihood of success on pursuing turnover proceedings for those assets. Dkt. No. 438. The TRO permitted Ms. Kalayjian to maintain "normal-course transactions for living expenses," not to exceed $10,000 per transfer. *Id.* At Ms. Kalayjian's request, I later expanded the uses to which she could apply her assets without prior leave of the court-including to pay tax obligations. I also ordered Ms. Kalayjian to show cause why an order should not be issued attaching her various assets connected with Mr.

Ghatanfard, as I will detail in a moment. *Id.* Plaintiffs and Ms. Kalayjian have engaged in extensive briefing on this issue, including in a supplemental round of briefing. Dkt. Nos. 420, 446, 470, 492, 497, 499, 504, 515. These were accompanied by declarations and other supporting materials.

I note that Plaintiffs and Ms. Kalayjian have filed other motions related to Plaintiffs' enforcement efforts, including two motions to quash subpoena *duces tecum* served on Ms. Kalayjian's banks and motions to hold Mr. Ghatanfard and Oak Grove Road LLC in contempt. Dkt. Nos. 364, 405, 449, 461; *see also* Dkt. No. 361 (order directing third-party Milton J. Pirsos, CPA, to comply with Plaintiffs' subpoena). I will not be addressing or resolving these motions today. I also note that Plaintiff is separately pursuing litigation against Valbella at the Park, LLC, to recover from it the judgment against Valbella Midtown, which has now ceased its operations. This is Zivkovic v. Valbella at the Park, case number 1:22-cv-7344.

Second, I will summarize the nature of Ms. Kalayjian's personal relationship with Defendant Mr. Ghatanfard, including the various transactions at issue in this motion.

Ms. Kalayjian and Mr. Ghatanfard are, in Ms. Kalayjian's words, "longtime life and business partners who have lived and worked together for approximately 20 years." Dkt. No. 471 at 2. They met in 2004, when Ms. Kalayjian was

working in an unspecified position at a hedge fund and took on a part-time job as a hostess at a restaurant owned by Mr. Ghatanfard named Valbella Greenwich in Greenwich, Connecticut. *Id.*

In 2008, Ms. Kalayjian took on another position, as a part-time real estate agent, for the two of them to purchase a house on Canterbury Road in Harrison, New York. *Id.* at 2-3; Dkt. No. 471-1. I will refer to this house as the "Canterbury House." Ms. Kalayjian represents that "David and I had an understanding that the Canterbury House was a joint house into which we both invested." Dkt. No. 471 at 3.

On June 28, 2011, the couple opened a joint account at Patriot Bank (the "Joint Account") to "pool our assets and provide a shared security." *Id.*; Dkt. No. 471-2. Over the next decade, the couple made deposits into the Joint Account and paid joint expenses out of it. Dkt. No. 471 at 3. Separately, Ms. Kalayjian opened a separate individual market account at Patriot Bank, which I will refer to as the Kalayjian Account. Dkt. No. 420-5.

Starting in or around 2011, Ms. Kalayjian and Mr. Ghatanfard repeatedly put the Canterbury House on the market for sale. Dkt. No. 471 at 3; Exh. 4 (listed for sale in 2011, 2012, 2014, 2016, 2017 x2, 2020). The house was finally sold on September 11, 2020 for a total sale price of $1,237,762.50, which was deposited into the Joint Account. Dkt. No. 420-8.

Over the next five days, $1.25 million was transferred into the Kalayjian Account. Dkt. No. 471 at 6; Dkt. No. 420-4 at 2.

Ms. Kalayjian and Mr. Ghatanfard's primary residence then became a house on Oak Grove Road in Southampton, New York. Dkt. No. 471 at 4. I will refer to this house as the Southampton House. Ms. Kalayjian again asserts that she and Mr. Ghatanfard "treated the Southampton House as a joint asset," although Mr. Ghatanfard was the sole owner on paper, as was the case with the Canterbury House. *Id.* Ms. Kalayjian represents that she took the lead on managing and overseeing significant repairs and renovations to the Southampton House. *Id.* at 4; Dkt. Nos. 471-5 to -15.

Ms. Kalayjian took on the task of supervising the contractors, making design choices for the renovations, and working with the insurance company for reimbursements for significant water damage that occurred at the Southampton House. Dkt. No. 471 at 5; Dkt. No. 471-10. Ms. Kalayjian asserts that if they had outsourced her work in picking out the design elements of the renovations, they would have paid at least $150,000. Dkt. No. 471 at 5. She also asserts that outsourcing the project management would have required "substantial six-figure compensation." *Id.*

On January 3, 2022, Ms. Kalayjian and Mr. Ghatanfard refinanced the Southampton House. Dkt. No. 471 at 5; Dkt. No. 420-16 and -17. On January 10, 2022, refinancing proceeds in

the amount of $1,422,798.18 was deposited into the Joint Account. Dkt. Nos. 420-17, 420-18. Two days later, Ms. Kalayjian withdrew these funds, though it is not clear whether this was deposited into the Kalayjian Account or a different account. Dkt. No. 420-19 (showing back of cashier's check with Ms. Kalayjian's endorsement and redacted account number ending in -3510).

On or around March 25, 2022, about a week prior to the commencement of the trial in this case, the title of the Southampton House was changed from a sole ownership in Mr. Ghatanfard's name into a joint tenancy with right of survivorship between Ms. Kalayjian and Mr. Ghatanfard. Dkt. No. 471 at 5-6; Dkt. No. 420-20. Ms. Kalayjian represents that this was done out of concern for Mr. Ghatanfard's age and in recognition of her contributions to the house. Dkt. No. 471 at 6; *see also* Dkt. No. 472-1 at 10-14 (Ghatanfard Deposition Transcript). In July 2022, Ms. Kalayjian began to make automatic monthly mortgage payments out of a separate individual Citibank account, ending in -1520. Dkt. No. 420-2 at 20; Dkt. No. 420-21.

Finally, I will summarize the business relationship and related transactions between Mr. Ghatanfard and Ms. Kalayjian:

In 2005, Mr. Ghatanfard opened Valbella Meatpacking, his first New York restaurant. Ms. Kalayjian represents that,

"[f]orsaking my career at a hedge fund to pour myself into my budding business and personal relationship with David," she began to work at Valbella Meatpacking. While her formal title was "hostess" and other "entry-level positions," Ms. Kalayjian represents that she did more substantial work and was a "core member of the restaurant's management team." Dkt. No. 471 at 7; Dkt. No. 471-24.

In 2008, Ms. Kalayjian worked to significantly change Valbella Steakhouse, another restaurant located in Eastchester, New York, including by changing its name to "TuttaBella." Dkt. No. 471 at 8; Dkt. No. 471-25. TuttaBella allegedly made substantial profits for several years afterwards. Dkt. No. 471 at 8.

In 2011, Ms. Kalayjian helped Mr. Ghatanfard open up another New York City restaurant named Valbella Midtown. Dkt. No. 471 at 10.

In 2015, Mr. Ghatanfard became the owner of a pre-existing restaurant named "One if by Land," and Ms. Kalayjian again agreed to help, working as "essentially the director of operations." Dkt. No. 471 at 8; *see also* Dkt. No. 471-26 to -34. In 2016, she put herself on the payroll for $600/week, which she represents was an underpayment for her labor and was done "with the understanding that [she] would eventually be repaid." Dkt. No. 471 at 9.

In January 2016, Mr. Ghatanfard sold TuttaBella and

deposited the proceeds of $788,430 into the Joint Account. This was then transferred to a different individual account belonging to Ms. Kalayjian, ending in -0612. Dkt. No. 471 at 8; Dkt. No. 471-3 at 2.

In 2019, Ms. Kalayjian opened a new restaurant for Mr. Ghatanfard called Bellasera in Larchmont, New York. Dkt. No. 471 at 10. She "did everything at Bellasera" but was not "paid a dime." *Id.*; Dkt. No. 471-36 to -37. Mr. Ghatanfard "decided to eliminate his stake" in Bellasera in 2020. Dkt. No. 471 at 10. I am not aware of any details provided as to how Mr. Ghatanfard's interest was disposed of, much less what payment he received and where it went.

From September 2020 to September 2021, Mr. Ghatanfard deposited his distributions from Valbella Midtown for a total of $800,000 into the Joint Account. Dkt. No. 420-10. Within days-often within 2 days-after each deposit, all or a majority of each deposit was transferred to the Kalayjian Account, for a total of $675,000 out of the $800,000. Dkt. No. 471 at 11; Dkt. Nos. 420-4. Ms. Kalayjian asserts that she was entitled to half of the $800,000 by nature of the Joint Account being a jointly shared account, and that the additional $275,000 was "compensation" for her work on Bellasera and the other restaurants over the years. Dkt. No. 471 at 11.

Separately, Ms. Kalayjian decided to open a new restaurant with Robert Daleo, but their plans were delayed due

to the COVID-19 pandemic. Dkt. No. 471 at 11-12. Finally, in February 2021, Ms. Kalayjian allegedly formed an LLC called Oak Grove Road, LLC (which I will refer to as "OGR") and handled the Department of State filings herself without consulting an attorney or accountant. *Id.* at 12. "As a result," she asserts, the OGR Operating Agreement originally filed with the New York Department of State "mistakenly reflect David as the sole member, when in fact, [Ms. Kalayjian] held a majority interest in the LLC." Dkt. No. 471 at 12; Dkt. No. 420-22 at 2, 3, 11.

In April 2021, OGR and another company now fully owned by Mr. Daleo formed Valbella at the Park, LLC (which I will refer to as "VATP"), to open a new "Valbella at the Park" restaurant in the City. Dkt. No. 471 at 12. Ms. Kalayjian asserts that she has been serving as VATP's Director of Operations, while Mr. Daleo has been the one to negotiate the lease for the restaurant and deal with its finances. *Id.* at 13. From February 2021 to February 2022, four payments from the Joint Account totaling $1.3 million and one payment of $600,000 from the Kalayjian Account were made as contributions to OGR. Dkt. No. 471 at 12; Dkt. No. 420-23; Dkt. Nos. 471-38 to -42. Ms. Kalayjian alternatively asserts that she made these payments, including those from the Joint Account, to be "[c]onsistent with our longstanding aim of making me the majority stakeholder of OGR," Dkt. No. 471 at 12, but also

argues that only half of the payments from the Joint Account is from her, Dkt. No. 515 at 9, 13.

On November 17, 2021, Mr. Ghatanfard sold his stake in the restaurant One if by Land, and the $600,000 in proceeds was deposited into the Joint Account. Dkt. Nos. 420-12 to -13. Two days later, this money was transferred to the Kalayjian Account. Dkt. No. 420-4 at 23. Ms. Kalayjian asserts that she withdrew this money as compensation for six years of running One if by Land. Dkt. No. 471 at 9-10.

As I've already noted, trial commenced in this case at the end of March 2022 and resulted in a jury verdict in April 2022. On June 16, 2022, Ms. Kalayjian represents that she and Mr. Ghatanfard acted "out of an abundance of caution" to "formalize [her] ownership interests in OGR by amending the OGR Operating Agreement" to transfer 90% of Mr. Ghatanfard's interest in OGR to Ms. Kalayjian. Dkt. No. 471 at 13; Dkt. Nos. 420-23 to -24. During his deposition in the separate litigation against VATP, Mr. Ghatanfard did not recall this assignment of his interests and amendment of OGR's operating agreement. Dkt. No. 420-11 at 13-14, 16, 18-19, 20-21. Ms. Kalayjian testified at her deposition that she could recognize both her and Mr. Ghatanfard's signatures on the OGR assignment agreement and amendment to the operating agreement. Dkt. No. 420-27 at 12-15. I also note that OGR's 2021 K-1, which Plaintiffs assert was filed in August 2022, lists Ms. Kalayjian

as a 90% member of OGR. Dkt. No. 471-43.

As of his May 4, 2023, deposition, Mr. Ghatanfard, previously a multi-millionaire, represented that he essentially has no assets other than "some clothes and an old car." Dkt. No. 420-11 at 6.

In total, Plaintiffs assert that a sum of $3,935,555.68 was deposited by Mr. Ghatanfard into the Joint Account and then transferred to Ms. Kalayjian's personal accounts over the course of the period from September 2020 to June 2022. This figure does not include the change in title for the Southampton House, the 90% of interest in OGR, and the unknown disposal of Mr. Ghatanfard's interests in the restaurant Bellasera.

III. ANALYSIS.

Plaintiffs seek the following relief: (1) an order attaching certain of Ms. Kalayjian's assets, which Plaintiffs value up to $3,935,555.68, her ownership interest in OGR, and her joint tenancy with a right of survivorship in the Southampton House; and (2) an order permitting Plaintiffs to discover additional assets of Ms. Kalayjian. Dkt. No. 420-34. Plaintiffs request that the Court direct Plaintiffs to provide an undertaking, if the order of attachment is granted, in a fixed amount no greater than $13,000. *Id.* at 30. These orders would, absent a change in circumstances, remain in place pending the resolution of Plaintiffs' turnover proceedings, as

they attempt to actually recover on Ms. Kalayjian's assets as voidable transactions under New York law.

A. Order of Attachment.

Plaintiffs seek to enforce the partial judgment and damages award in this case through an order of attachment.

Federal Rule of Civil Procedure 69(a)(1) provides:

"A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution-and in proceedings supplementary to and in aid of judgment or execution-must accord with the procedure of the state where the court is located . . . ."

Turning then to New York law, CPLR § 6212(a) requires that the plaintiff seeking an order of attachment "show, by affidavit and such other written evidence as may be submitted, that there is a cause of action, that it is probable that the plaintiff will succeed on the merits, that one or more grounds for attachment provided in [CPLR] section 6201 exist, and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff."

CPLR § 6201, in turn, provides that:

"An order of attachment may be granted in any action . . . where the plaintiff has demanded and would be entitled . . . to a money judgment against one or more defendants, when:

. . .

(3) the defendant, with intent to defraud his

creditors or frustrate the enforcement of a judgment that might be rendered in plaintiff's favor, has assigned, disposed of, encumbered or secreted property, or removed it from the state or is about to do any of these acts; or

. . .

(5) the cause of action is based on a judgment, decree or order of a court of the United States . . . ."

Whether to grant or deny an order of attachment is a matter of the Court's discretion, even when the statutory requirements are met. *See Iraq Telecom Limited v. IBL Bank S.A.L.*, 43 F.4th 263, 272 (2d Cir. 2022) (holding that courts have discretion in deciding motions for attachment, including by considering extraordinary circumstances, even when statutory requirements are met); *see also Bollenbach v. Haynes*, 2018 WL 4278347, at *2 (S.D.N.Y. May 29, 2018). In particular, the Court must ensure that "the remedy is needed to secure payment or obtain jurisdiction." *Capital Ventures International v. Republic of Argentina*, 443 F.3d 214, 222 (2d Cir. 2006) ("It has discretion to the extent that these determinations require weighing of evidence and also in balancing competing considerations."); *see also BSH Hausgerate, GmbH v. Kamhi*, 282 F. Supp. 3d 668, 671 (S.D.N.Y. 2017). If the statutory grounds–including likelihood of success on the merits–are met and the necessity of the attachment is shown, however, the Court ordinarily must grant the order of attachment. *Capital*

Ventures International, 443 F.3d at 222 (noting a court's "discretion does not permit denial" once these requirements are met, "at least absent extraordinary circumstances and perhaps even then"). Finally, because an order of attachment "is an extraordinary remedy created by statute in derogation of common law," it is "strictly construed in favor of those against whom it is employed." *Brastex Corp. v. Allen International, Inc.*, 702 F.2d 326, 332 (2d Cir. 1983); *accord Bollenbach*, 2018 WL 4278347, at *2. But *see, e.g., DLJ Mortgage Capital, Inc. v. Kontogiannis*, 594 F. Supp. 2d 308, 319 (E.D.N.Y. 2009) ("[A]ll legitimate inferences should be drawn in favor of the party seeking attachment….").

I will now proceed to analyze whether Plaintiffs have shown, by the declarations and other written materials submitted in support of their motion, that the elements of the CPLR § 6212(a) test are met and that the order of attachment is necessary. I find that Plaintiffs have done so.

1. CPLR § 6212(a).

Elements.

The only elements of CPLR § 6212(a) that require close analysis are whether there is a cause of action and Plaintiffs' probability of success on the merits, which here requires the Court to examine the merits of Plaintiffs' anticipated turnover proceedings against Ms. Kalayjian's assets from Mr. Ghatanfard. *See DLJ Mortgage Capital, Inc.*, 594 F. Supp. 2d at 320

("[P]roof of the merits of a plaintiff's claim, by definition, helps satisfy the first two elements for attachment ….").

The other elements are clearly satisfied. I will review them now. One or more grounds of CPLR § 6201 exists here. From my perspective, most obviously, "the cause of action is based on a judgment . . . of a court of the United States," given that Plaintiffs are seeking to enforce and recover on this Court's judgment against Defendants. *See* CPLR § 6201(5). Ms. Kalayjian argues that this provision is not applicable here because Ms. Kalayjian herself is not a judgment-debtor, but this is not a requirement under the plain text of the statute and is not adequately supported in Ms. Kalayjian's briefing. I note, if it were, such proceedings against any third party would not be permitted under the statute.

Alternatively, for the reasons I will explain, Plaintiffs have shown that "the defendant, with intent to defraud his creditors or frustrate the enforcement of a judgment . . . , has assigned, disposed of, encumbered or secreted property." *Id.* § 6201(3). And because there are no counterclaims asserted against Plaintiffs, "the amount demanded from the defendant" naturally exceeds the counterclaims. *Id.* § 6212(a).

Proceeding to the remaining CPLR § 6212(a) elements, I note that Plaintiffs principally rely on the recently enacted

New York Uniform Voidable Transactions Act ("UVTA"), including the provision for voidable fraudulent transfers in the New York Debtor and Creditor Law ("DCL") § 273(a)(1).

DCL § 273(a)(1) provides:

"(a) A transfer made or obligation incurred by a debtor is voided as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay or defraud any creditor of the debtor."

A creditor making a claim for relief under § 273(a) must prove the elements of the claim by a preponderance of the evidence. *Id.* § 273(c).

As an initial matter, Plaintiffs and Ms. Kalayjian dispute whether all of the transactions in question constitute "transfers" under the UVTA. "Transfer" is defined by the UVTA as "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance." DCL § 270(p).

Plaintiffs assert that the change in the title to the Southampton House from sole ownership to a joint tenancy shared by Mr. Ghatanfard and Ms. Kalayjian constitutes a "transfer."

Dkt. No. 420-34 at 21-22. They do not dedicate briefing space to explain that argument. Nonetheless, the Court concludes that they have adequately established that it constituted a transfer under the UVTA. "A joint tenancy is an estate held by two or more persons jointly, with equal rights to share in its enjoyment during their lives, and creating in each joint tenant a right of survivorship." *Goetz v. Slobey*, 908 N.Y.S.2d 237, 239 (1st Dept. App. Div. 2010). By changing the title to the Southampton House, Mr. Ghatanfard parted with half of his interest in the property almost immediately, as well as others of his rights and interests, such as the right to dispose of the property without the consent of Ms. Kalayjian. And, of course, the result of the transaction is that 100% of the value of the property would be transferred automatically to Ms. Kalayjian on her death.

Given his partner joint tenancy in the property constitutes a transfer of an "interest in an asset." Again, "transfer" includes every mode of transfer, whether direct or indirect, or conditional, and it includes encumbrances, such as limitations on the right of the owner to make unitary decisions regarding the asset, as the statute provides. The transfer includes the creation of a lien or other encumbrance.

The other "transfers" at issue are the numerous deposits Mr. Ghatanfard made into the shared Joint Account that were then substantially or in whole transferred to Ms.

Kalayjian's personal accounts as well as the assignment of 90% of the interest in OGR to Ms. Kalayjian. On their face, these constitute "transfers" under the UVA.

Ms. Kalayjian objects that half of the funds at issue that were moved from the Joint Account into her personal accounts are rightfully hers and therefore are not part of a "transfer." Dkt. No. 470 at 8. Plaintiffs respond that the 2d Cir. expressly rejected this argument in the context of a Connecticut statute that is similar in text. Plaintiffs also argue, as I understand it, undisputedly, that Ms. Kalayjian's idea of the immediate half-split is incorrect, because each tenant is presumed to possess the entirety of a joint account, not just half, and Ms. Kalayjian has failed to rebut that presumption. *See Viggiano v. Viggiano*, 523 N.Y.S.2d 874, 874 (2d Dep't 1988) ("The opening of a joint bank account creates a rebuttable presumption that each named tenant is possessed of the whole of the account so as to make the account vulnerable to the levy of a money judgment by the judgment creditor of one of the joint tenants."); *See also Mirlis v. Greer*, 80 F.4th 377, 384 (2d Cir. Aug. 30, 2023) (holding that a "transfer" under Connecticut's UVTA equivalent occurred when debtor's wife withdrew funds deposited by debtor into joint account). The Court is inclined to agree with Plaintiffs as a result. But in any case, to some degree, when the transfers happened is not fully dispositive here, as Ms. Kalayjian does not dispute that

what she describes as "her half" of the funds in question is now in her personal accounts. Since that half derived from transfers of assets from Mr. Ghatanfard, that is, the collective assets of DG's assets in the joint account, it is subject to attachment.

Proceeding to the remaining elements of DCL § 273(a)(1), the only truly disputed element is whether Plaintiffs have demonstrated that Mr. Ghatanfard made the transfers in question with the requisite "actual intent." And, despite the high bar required to show such actual intent, I find that Plaintiffs have shown a likelihood of success on their claim here; that is, that they have shown that it is sufficiently probable.

"Because 'fraudulent intent is rarely susceptible to direct proof,' courts in the Second Circuit have examined whether allegedly suspicious transactions exhibit 'badges of fraud' that give rise to a sufficient inference of intent." *Yong Xiong He v. China New Star Restaurant, Inc.*, 2020 WL 6202423, at *6 (E.D.N.Y. Oct. 22, 2020) (quoting *DLJ Mortgage Capital, Inc.*, 594 F. Supp. 2d at 320) (analyzing CPLR § 6201(3) showing). "The existence of several badges of fraud can constitute clear and convincing evidence of actual intent to defraud creditors." *Id.* (quoting *In re MarketXT Holdings Corp.*, 376 B.R. 390, 405 (Bankr. S.D.N.Y. 2007)). These "badges of fraud" include:

(1) [T]he lack or inadequacy of consideration; [(2)] the family, … friendship or close associate relationship between the parties; (3) the retention of possession, benefit or use of the property in question; (4) the financial condition of the party sought to be charged both before and after the transaction in question; (5) the existence or cumulative effect of a pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors; and (6) the general chronology of the events and transactions under inquiry. *Id.* (quoting *CF 135 Flat LLC v. Triadou SPV N.A.*, 2016 WL 5945912, at *10 (S.D.N.Y. June 24, 2016)).

Notably, these significantly overlap with the 11 non-exclusive factors provided in DCL § 273(b) for the determination of the debtor's actual intent under § 273(a)(1). These factors are:

(1) the transfer or obligation to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

DCL § 273(b).

I find that Plaintiffs have shown a likelihood of success of proving Mr. Ghatanfard's actual and fraudulent intent to engage in these transfers to Ms. Kalayjian to evade judgment. Before I proceed to the analysis, I want to emphasize that I am not making ultimate findings of fact or determinations of liability under DCL § 273, and that I am making these determinations today based on the preliminary facts before me regarding the attachment request presented here. I also fully understand Ms. Kalayjian's overarching point that many people live the way she does, or did, with Mr. Ghatanfard, without formalizing the nature of their shared

lives.

Turning to the "badges of fraud" present here, I note that Plaintiffs and Ms. Kalayjian do not dispute the basic nature, amount, and timing of the transactions at issue, which are also supported by declarations and other written materials submitted to the Court. I will go over each of these transactions briefly. Then I will comment on some of the additional badges of fraud.

The Canterbury House sale occurred in 2020, three years into this lawsuit, and the entirety of the $1,237,762.50 was deposited into the Joint Account and then, within the next 5 days, $1.25 million, which includes the full sale proceeds of the Canterbury House, was deposited into Ms. Kalayjian's personal account and out of Mr. Ghatanfard's reach. I acknowledge Ms. Kalayjian may have put in a lot of work into the house, but the evidence that this transfer was actually intended to be compensation for that work does not outweigh the other indicia of fraud; nor does it sufficiently establish that the transfer was made for a reasonably equivalent value. That the entire proceeds were transferred so quickly out of Mr. Ghatanfard's reach, rather than remaining in the commingled Joint Account that Ms. Kalayjian's counsel emphasizes as representing the shared, joint lives the two lead together supports the conclusion that the initiative here was motivated by an intent to defraud the judgment creditors. Therefore, and

for the other reasons that I am going to describe, I find that plaintiffs have shown a likelihood of success with respect to showing fraudulent intent with respect to this transfer.

Valbella Midtown distributions: From Sept. 2020 to Sept. 2021, a series of deposits totaling $800,000 were deposited into the Joint Account. Within a few days after each transfer, again often within two days but sometimes a few more, $675,000 in total out of that $800,000 was transferred to Ms. Kalayjian. Ms. Kalayjian asserts that she is entitled to $400k by law, by virtue of her entitlement to half the joint account and otherwise justifies the $275,000. The law is that Plaintiffs, as creditors, may seek the entirety of the $800,000, and again, the timing, nature, and lack of evidence as to this being compensation for a reasonably equivalent value is sufficient, together with the other factors that I will describe, to show that Plaintiffs have a likelihood of success in demonstrating fraudulent intent with respect to this transfer.

Southampton House refinancing: This occurred in January 2022, five years into the litigation. I acknowledge the alternative explanation presented by Ms. Kalayjian regarding the timing of this transaction, namely, that the concern was rising floating interest rates at the time. But, again, $1,422,798.18 was deposited into the Joint Account and then, two days later, the exact amount was transferred into Ms.

Kalayjian's personal account. For the same reasons as the Canterbury House sale proceeds, this is indicative of fraudulent intent.

One if by Land proceeds: In November 2021, $600,000 of the proceeds were deposited into the Joint Account and then again, two days later, the same amount was transferred to the Kalayjian Account. Ms. Kalayjian asserts that this is compensation for her prior work on the restaurant, but there is insufficient evidence that this represented a reasonably equivalent value for that labor. Again, on the facts before me, Plaintiffs have shown a likelihood of success in showing that this transfer was accomplished with fraudulent intent.

There are two other transfers that are not strictly monetary that I will address.

The Southampton House title transfer: This transfer occurred in late March 2022, about a week before trial in this case. The timing is suspect, again. I appreciate that Ms. Kalayjian had been living in this house for a long time with Mr. Ghatanfard as his partner at this point. But in changing the title of the house to a joint tenancy, Mr. Ghatanfard transferred an interest in his right to the property to Ms. Kalayjian at least equivalent to a lien as a joint tenant. This encumbrance, coupled with the timing of the event, is strongly indicative of fraudulent intent, together with the other badges of fraud that I will describe in a moment.

With respect to the OGR interest transfer, I also find a likelihood of fraudulent -- that the plaintiffs will be able to show fraudulent intent because the OGR equity was solely in Mr. Ghatanfard's name and because of the timing of the transfer and the other indicia of fraud. I understand that there are competing narratives as to why things were done in this way, but the fact is that Mr. Ghatanfard was the owner of OGR on paper when it was formed in February 2021, and there is nothing to show that the $1.3 million paid to OGR out of the Joint Account in the following year was directed by or from Ms. Kalayjian's personal funds. I acknowledge that $600,000 was paid out of Ms. Kalayjian's account, though it's not clear where the source of that money is from. It is also particularly relevant here that the assignment of the 90% interest to Ms. Kalayjian occurred after a jury verdict was rendered in this case, with a sizeable amount against Mr. Ghatanfard.

I will add a few points about all of these transfers. The only comparable transfer from Mr. Ghatanfard outside of this period, as far as I am aware, is that of the January 2016 proceeds from a restaurant sale. This one sale, however, does not diminish the suspicious nature of this flurry of activity that occurred between 2020 to early 2022, as Mr. Ghatanfard confronted the underlying litigation. Notably, courts have recognized that the "badges of fraud" include the "pendency or

threat of suits," even if no verdict or judgment has yet been issued. *See, e.g., Yong Xiong He*, 2020 WL 6202423, at *6; *see also* NY DCL § 273(b)(4) ("before the transfer was made …, the debtor had been sued or threatened with suit").

Let me turn to some of the other badges of fraud. These factors, as well as the close personal and business partnership between Ms. Kalayjian and Mr. Ghatanfard, which I do not believe is disputed, support the conclusion that Mr. Ghatanfard acted in an attempt to defraud Plaintiffs or, at the very least, to hinder, delay, or otherwise frustrate the enforcement of the money judgment against Defendants and in Plaintiffs' favor. Ms. Kalayjian also does not provide an alternate explanation for the timing of these transactions. She points to Mr. Ghatanfard's older age and that she is being "compensated" or "reimbursed" for her own contributions, but these reasons do not touch upon why these transactions happened when they did. Mr. Ghatanfard's unfortunate recent medical diagnosis, of course, occurred after the transactions and therefore also cannot be part of a counter-explanation. Dkt. No. 471 at 6 (diagnosis was in July 2023); today, however, I recognize that counsel has represented that the diagnosis came a year earlier. But again, that doesn't explain the timing of all these transfers.

Adding to the badges of fraud is the fact that Mr. Ghatanfard testified that, as of May of this year, he is now

essentially insolvent. This is one of the specific badges of fraud that is the condition of Mr. Ghatanfard's position following these transactions. He went from a multi-millionaire to, in his words, a pauper. This is a fact that is a badge of fraud recognized by the case law.

The record also suggests that Mr. Ghatanfard continues to live as he did before, namely, in that he and Ms. Kalayjian still live in the Southampton House as their primary residence, with Ms. Kalayjian now paying the monthly mortgage on the house out of her personal account, and that he uses Ms. Kalayjian's credit card for personal expenses. Here, the third badge of fraud is "the retention of possession, benefit, or use of the property in question." Mr. Ghatanfard, despite these transactions, is, as I understand it, still undisputably obtaining the benefit of the transferred assets, including living in this house in the Hamptons. Also, Ms. Kalayjian's continuous emphasis on her shared and commingled finances and the fact that she lives with Mr. Ghatanfard actually makes it suspect that the approximately $4 million at issue were deposited into the Joint Account and then almost immediately transferred out into Ms. Kalayjian's personal accounts, which again is not disputed.

So considering all the facts and the various badges of fraud, including the timing of the transfers, Mr. Ghatanfard's financial condition following the transfers, Mr. Ghatanfard's

continued beneficial use of the assets, as a result of his strong, personal relationship with Ms. Kalayjian, these are all badges of fraud that support Plaintiffs' application for an order of attachment here.

Accordingly, I find that Plaintiffs have shown a likelihood of success on the merits of their cause of action under DCL § 273(a)(1) to recover on Mr. Ghatanfard's voidable fraudulent transfers to Ms. Kalayjian. This satisfies the remaining elements of CPLR § 6212(a) for showing entitlement to an order of attachment.

Plaintiffs also assert they could recover Ms. Kalayjian's assets under DCL § 273(a)(2), which provides for a claim of constructive fraudulent transfer, rather than actual fraudulent transfer. Specifically, § 273(a)(2) requires a showing that: "without receiving a reasonably equivalent value in exchange for the transfer or obligation, . . . the debtor: . . . (ii) intended to incur, or believed or reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due."

I do not have to reach this basis for Plaintiffs' motion for an attachment, as I have already found that Plaintiffs have shown a likelihood of success on their § 273(a)(1) claim. Of course, my reasoning as to whether Mr. Ghatanfard received consideration of a "reasonably equivalent" value for his transfers to Ms. Kalayjian likely applies to this

basis as well. Plaintiffs may choose to re-assert this claim upon further discovery and resolution of their turnover proceedings. For now, I will leave open the question of whether it can be said that the potential, arguably likely, judgment against Mr. Ghatanfard was a "debt" that Mr. Ghatanfard "intended to incur, or believed or reasonably should have believed that [he] would incur" at the time of these transfers.

Finally, Plaintiffs assert they could recover Ms. Kalayjian's assets at issue under DCL § 274(a), which provides:

"A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation."

Ms. Kalayjian moves to strike Plaintiffs' briefing on § 274(a) because Plaintiffs explicitly sought leave to file a supplemental brief on the basis of asserting § 273(a)(2) arguments and yet dedicated much of the supplemental brief permitted by the Court discussing § 274(a). Dkt. Nos. 499, 504. This was not the basis upon which supplemental briefing was granted.

It is unnecessary for the Court to consider this argument, given that Plaintiffs' motion has already been granted on other grounds. Accordingly, Ms. Kalayjian's motion to strike is granted.

2. Necessity of the Attachment.

Having found that the statutory requirements for an order of attachment under CPLR § 6212(a) have been met, I now proceed to examine whether Plaintiffs have shown that an order of attachment is necessary, such that I should exercise my discretion to grant this "extraordinary remedy" of attachment, or if any other extraordinary circumstances exist for the Court's consideration.

As already described in detail, Mr. Ghatanfard-whether with or without Ms. Kalayjian's cooperation-enabled the deposit of millions of dollars into Ms. Kalayjian's personal bank accounts, in addition to giving her joint tenancy of the Southampton House and enabling her to take 90% interest in OGR. This all occurred during the pendency of this litigation, or, in the case of the OGR transfer, two months after the jury verdict against Defendants.

Further, in his May 4, 2023 deposition, Mr. Ghatanfard testified that he was essentially insolvent, owning no assets other than "some clothes and an old car." Dkt. No. 420-11 at 6. In other words, there is serious cause for concern that Mr. Ghatanfard engaged in significant efforts to put his

substantial assets out of reach of Plaintiffs to recover on their judgment. As a result, Plaintiffs' only currently known means of recovering any significant portion of the judgment against Defendants is through Ms. Kalayjian's assets. Mr. Ghatanfard's arguably inconsistent statements at his deposition, as well as Ms. Kalayjian's I'll say vague statements, provide no comfort to the Court as to Plaintiffs' chances of recovery on their judgment without the attachment.

Having found that an order of attachment is necessary, I do not find that any extraordinary circumstances exist here to nevertheless find that attachment is not warranted. *See, e.g., Iraq Telecom Limited*, 43 F.4th at 269, 272-73 (affirming court's consideration of "extraordinary circumstances," which included the effect of the attachment on a foreign economy and interference with innocent third parties).

Accordingly, I find that an order of attachment on Ms. Kalayjian is appropriate for the amount of $3,935,555.68, as well as her joint tenancy interest in the Southampton House and the ownership interest in OGR. Also, to allow Ms. Kalayjian to make necessary mortgage or tax payments and other living expenses, the same restrictions imposed by the July 5, 2023 TRO permitting Ms. Kalayjian to make normal-course transactions for living expenses not to exceed $10,000 per transfer will be maintained, together with the other carveouts that I previously established.

B. Undertaking.

Under CPLR § 6212(b), Plaintiffs must provide an undertaking:

"On a motion for an order of attachment, the plaintiff shall give an undertaking, in a total amount fixed by the court, but not less than five hundred dollars, a specified part thereof conditioned that the plaintiff shall pay to the defendant all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the attachment if the defendant recovers judgment or if it is finally decided that the plaintiff was not entitled to an attachment of the defendant's property."

I bear in mind that, according to the text of the statute as I have just quoted it, the undertaking is essentially security for any fees, costs, and damages incurred by the subject of the order of attachment in case it is eventually determined that Plaintiffs were not entitled to the attachment. *See* CPLR § 6212(b).

The ultimate amount of the undertaking is at the Court's discretion, as long as the amount meets the $500 statutory minimum. *See, e.g., BSH Hausgerate*, 282 F. Supp. 3d 668, 672 n.2. However, "[c]ourts frequently set the undertaking as a fraction of a percent of the value of the attachment." *Yong Xiong He*, 2020 WL 6202423, at *16 (citing cases ranging from 0.04% to 4.5%).

Plaintiffs suggest an undertaking of $13,000. Ms. Kalayjian notes that Plaintiffs' justification for that amount leaves out her interest in the Southampton House or OGR, but it's not clear to me that I have enough information also to justify the $400,000 counter.

I am going to invite brief argument on this, counsel. I'll just posit that I think that the $13,000 is way too little, given the possible legal fees associated with this issue.

I don't know if $400,000 is too great, however, and on that that I'm particularly interested in hearing from counsel for Ms. Kalayjian about what damages she may incur, given the scope of the carveouts that I have already provided, in other words, what can't she do, how is she being harmed by the TRO as we are litigating this case so that I can quantify the correct amount.

Let me turn first to Ms. Kalayjian's counsel.

Counsel.

MR. SHIFRIN: Your Honor, as I said previously, these are the entirety of her assets, liquid and illiquid alike. If they are attached, she is certainly harmed in her inability to live her life fully and spend the money as she deems fit for herself. To me it strikes me as pretty comprehensive, the harm that she is dealing with, having these assets.

THE COURT: Let me just ask, is she planning to sell

the Southampton house?

MR. SHIFRIN: I'm not aware of any plans to sell the Southampton house, no.

THE COURT: Is she planning to divest herself of her interest in the restaurant?

MR. SHIFRIN: No, she is not, your Honor.

THE COURT: Thank you.

I'll take those off of the table for just the moment.

Right now she is living on 10,000, so that's $120,000 post tax.

What is she not able to do?

MR. GORDON: Your Honor, if I may address that.

THE COURT: That's fine.

MR. GORDON: She would not be able to make any investments in other businesses. She likely would not be able to take any kind of a meaningful vacation. She likely would not be able to spend on clothing, food, and other living expenses. I mean, she would likely not be able to perform any improvements to the Southampton home should anything happen, like that devastating flood.

I mean, $10,000, given the quality of life that she had been living prior to the attachment and when -- and she certainly was spending more than $10,000 a month. If she ever were to separate from Mr. Ghatanfard, I would speculate that her -- whatever settlement she might have reached with him

would have been well in excess of 10,000 a month.

THE COURT: Thank you. Good. Understood.

Counsel for plaintiff, why is 13,000 the right amount?

MR. KIRSCHENBAUM: I think in our original brief, together with our TRO, we cited that there was sort of just a certain percentage range and 13,000 falls within that range.

I think in terms of the issues that Ms. Kalayjian's counsel have raised right now, there is not -- these aren't really issues of damages. I understand that it's uncomfortable to not be able to do more things than you want to do with your money. But like your Honor said, there is not a specific prospect on the table. We in fact don't know anything about her assets. For all we know, she has plenty of money, in excess of the restraint here, that she has full access to. It's not clear to us what tangible damage at all there is, in light of the Court's allowing her to use up to $10,000 and live her everyday life, pay her taxes, etc.

THE COURT: Thank you. Good.

MR. GORDON: Your Honor, may I just address the issue of damages? My apologies.

THE COURT: That's fine. Please go ahead.

MR. GORDON: This has had a staggering irrevocable impact on her life. Because in addition to running a restaurant, she has been dealing with the debilitating nature of Mr. Ghatanfard's health, and she has been forced to spend

time and resources defending herself in this case, and that, coupled with attending to Mr. Ghatanfard's health issues, and running a major restaurant, and having to pay counsel and having to make herself available to counsel, which takes her away from the restaurant and from Mr. Ghatanfard, has had an impact on her that you can't even put a price on.

THE COURT: Understood.

Counsel, having considered the various arguments and based on my review of the record, I believe that an undertaking of $150,000 is appropriate, given the costs associated with litigating this issue and the potential damages.

In setting this amount, let me just note one thing. I appreciate the arguments made by both sides, on plaintiffs' side that they don't know that this is the full scope of Ms. Kalayjian's assets; on defendant's side, this may be limiting her ability to live the kind of life that she was previously living; in other words, the $10,000 a month is insufficient. They are both fair points.

I will say one thing, which is that I set the $10,000 monthly limit without a lot of data from Ms. Kalayjian about her needs. I'm happy to consider an alternative proposal about what that amount should be. If she needs more money, please confer with plaintiffs and write me. I'm happy to consider changing that amount. My goal here is to keep her from dissipating assets, but I appreciate that if these are her

assets from which she is living that I should take that into account, and I would welcome more data.

MR. KIRSCHENBAUM: Your Honor, a quick question.

THE COURT: Yes.

MR. KIRSCHENBAUM: Can that go both ways? Inasmuch as if she needs more money to live her life and we reach an agreement, that that would then reduce the amount of the required undertaking?

THE COURT: Thank you.

I'll let the parties talk that over. If you can reach agreement on that, I'm happy to hear your proposals.

Let me just take up very briefly the application for enforcement-related discovery.

I will just say the following.

C. Enforcement-Related Discovery

Federal Rule of Civil Procedure 69(a)(2) provides: "In aid of the judgment or execution, the judgment creditor . . . may obtain discovery from any person-including the judgment debtor-as provided in these rules or by the procedure of the state where the court is located." New York CPLR § 6220, in turn, provides: "Upon motion of any interested person, at any time after the granting of an order of attachment and prior to final judgment in the action, . . . the court may order disclosure by any person of information regarding any property in which the defendant has an interest, or any debts owing to

the defendant."

I agree with Plaintiffs that some discovery is warranted, given the serious concerns here about Mr. Ghatanfard's intent to hide his assets from the judgment. I also don't believe I've seen an explanation from Ms. Kalayjian on the identity of the unidentified account ending in -3510 that $1.4 million from the Southampton House refinancing was purportedly deposited into. *See* Dkt. No. 420-19.

Now, at the same time, plaintiffs have been pursuing discovery to enforce the judgment against defendants, I have heard from counsel for Ms. Kalayjian earlier today that there is a large volume of other discovery that's happening in parallel to this case.

As a result, while I appreciate some additional discovery may be needed here, to the extent that the request is that I grant carte blanche for all discovery of all types, I'm not going to open the door to that right now. If there are particular avenues of discovery that you want to request in support of these applications, what I'd ask you to do is to discuss it with counsel for defendant and to seek leave from the Court with more specificity as to what it is that you seek.

Again, I think that you are entitled to some discovery under the rules. I do want to, however, encourage the parties to confer about the appropriate scope of the discovery, and the request here is sort of, I'll call it, a little unclear about

this sweeping or not sweeping scope of discovery that plaintiffs are requesting.

Go ahead, counsel.

MR. KIRSCHENBAUM: Your Honor, if I may, just to get out there exactly the discovery we are looking for and to get it out there, if that's OK, so that we don't come back with a discovery dispute about what the scope your Honor envisioned, what we really need is simply the chain of cash, what are the bank accounts that we could collect from, what are the cash assets and other assets that could satisfy -- that would satisfy this judgment if we were going to execute on it.

THE COURT: Let me just ask -- and I apologize because I know that these depositions were taken in the other case. Are those questions that you pursued with Ms. Kalayjian in the deposition?

MR. BUZZARD: We know of at least -- just to get to the nitty gritty, we know of at least two accounts that we don't have any information about. One is the Citibank account that you referenced from which Ms. Kalayjian is paying the mortgage on the Southampton property and into which there have been millions dollars of transfers that came from Valbella At The Park restaurant to Oak Grove Road, and then into Ms. Kalayjian's personal Citibank account. We know that there is a string of transfers into that account, and we suspect that there is substantial funds in that account. That was one --

that account was the subject of one of our subpoenas. We attempted to get information about that account. And Ms. Kalayjian moved to quash that subpoena. That is currently before your Honor. That's one issue.

The second is this unidentified account into which the $1.4 million from the refinance went. We are not sure where that account is. We asked Ms. Kalayjian about that account in the information subpoena. We did not get a response identifying that account. We would like to conduct discovery of that account. To the extent there are other accounts that Ms. Kalayjian owns, we need to know what those are and where they are.

THE COURT: Thank you.

I'll hear from counsel for Ms. Kalayjian. Any concerns about that scope of discovery? I understand that you may take the position that they have already sought this. But anything else that you want to share?

MR. GORDON: The only, I guess, qualification I would like to make is in response to plaintiffs' information subpoenaed to Ms. Kalayjian about these counts. We objected to those inquiries as being overbroad and unnecessary. And because the money was hers, they were not entitled to get the information.

Similarly, I thought that they had sufficient information regarding the Citibank account. I may be wrong.

I'm happy to meet and confer with them to discuss discovery with these parameters, i.e., the chain of bank accounts as represented by Mr. Kirschenbaum.

THE COURT: Thank you.

The scope of discovery that the parties are talking about now sounds, I'll just say provisionally, to be within bounds. I do ask the parties to meet and confer about it and to do your best to eliminate duplicative discovery that may have been sought between the two actions.

Go ahead, counsel.

MR. KIRSCHENBAUM: There was one more thing, your Honor, which is, essentially, to the extent that there is additional evidence or arguments that defendants intend to set forth that have not been raised -- in other words, we think we know what we are dealing with at this point, given debriefing on the TRO and the depositions we have taken to date.

THE COURT: Let me just pause you, and I apologize. I just want to end. I have taken a lot of your time.

I see two different questions here. One is discovery in support of the attachment action, and two is discovery in support of any potential future turnover proceeding that hasn't yet been filed. I just want to note that I understand that we are talking now about bucket 1 and not yet discovery in bucket 2.

MR. KIRSCHENBAUM: What I understand is that the

discovery I was referring to, which is the disclosures under 6220, is essentially a bridge between pocket 1 and pocket 2. If defendants -- if there is going to be a turnover proceeding with a trial, then if Ms. Kalayjian is going to make other arguments than what we have heard today, or if she is going to present other testimony than what we have seen to date, then that's the type of discovery -- the second type of discovery.

THE COURT: Thank you.

I'll hear from the parties on that. I think that that is all bucket 2, as I understand it. In other words, those are facts supporting their arguments in opposition to the turnover action. Let's leave it at that.

Counsel, thank you much for your time. Thank you very much for your briefing. It was very thoughtful.

I just want to respond to one of the things that Ms. Kalayjian's counsel says, which is basically the sensitivity to the way that she lives her life. I just say, I do recognize that normal people do not document every little thing that they do, so I appreciate that. At this same time, I am required to look at this in light of all of the, I'll call it, indicia of fraud, and I emphasize, again, that my determinations here are not the same as a determination on the merits based on the full record. Instead, I am simply reviewing the probability of success based on the standard that I have already set forth. I hope that you will express that to your client.

Thank you all very much. This proceeding is adjourned.

(Adjourned)